



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TWELVE OAKS MEDICAL CENTER
c/o HOLLAWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box

#50

Respondent Name

TPCIGA FOR HOME INDEMNITY CO

MFDR Date Received

NOVEMBER 4 2005

MFDR Tracking Number

M4-06-1691-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated December 2, 2005 "...Under Rule 134.401 (c)(6) of the acute care inpatient hospital fee guideline of the Division, this claim would be reimbursed at the stop loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00 resulting in a reimbursement of \$202,088.60. Based on the clear wording of the rules of the Division and Orders of SOAH and Travis County District Court, the carrier is liable for an additional sum owed our client in the amount of \$93,851.64 ..."

Amount in Dispute: \$93,851.64

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated November 15, 2005: A position statement was not included.

Response submitted by: Texas Property and Casualty Insurance

Respondent's Supplemental Position Summary Dated November 28, 2005: "We have been retained by Texas property and Casualty Insurance ...Provider has not met its burden of proof to establish that its billed charges are usual and customary as that term has been defined. Provider has submitted no evidence that its billed charges bear any relation to its cost; that its charges are within the customary range of fees charged for the same services by others in the geographic locality; that its charges are reasonable based on the medical circumstances; or that its charges are at a level which achieves effective medical cost control.

Respondent's Supplemental Position Summary Dated September 1, 2011: "TPCIGA files this supplemental response pursuant to DWC's notice providing TPCIGA the opportunity to do so in light of the opinion in *Texas Mut. Ins. Co. v. Vista Cmty. Med. Ctr....*" "Requestor is not entitled to reimbursement under the stop-loss exception to the former inpatient hospital fee guideline because it has not demonstrated that the services it provided during this admission were unusually costly and unusually extensive...Because TPCIGA has already paid Requestor in excess of this amount, it is entitled to a refund of the overpayment in the amount of \$70,577.25."

Supplemental Responses Submitted by: STONE LOUGLIN & SWANSON, LLP

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 5, 2004 through November 16, 2004	Inpatient Hospital Services	\$93,851.64	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- F –G, M Fee guideline MAR reduction. Charges reduced to usual and customary to determine total audited charges. Chgs exceed
- W1 – WC state fee schedule adj. pd per diem method of the 1997 inpt fee guidelines. Audited chgs do not exceed \$40k therefore the stop loss provisions do not apply on this case. u&c for same or similar geographic local based on medical circumstance.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?
5. Is the respondent entitled to an order or reimbursement or refund?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the

carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the division concludes that the total audited charges exceed \$40,000.

2. The requestor in its position statement asserts that “Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor (‘SLRF’) of 75%...” The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” Review of the submitted documentation finds that the length of stay for this admission was three surgical days and eight ICU/CCU days; therefore the standard per diem amounts of \$1,118.00 and \$1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of \$15,834.00.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$563.00/unit for Acetylcys-20%30 and \$517.50/unit for Propofol 100ml. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals. For that reason, reimbursement for these items cannot be recommended.
 - The division notes that 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A) as follows:

Charge Code	Itemized Stmt Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
81389991	Crshd cncll 30cc	Cortical Cancellous crushed	1 @ \$334.56	\$334.56	\$368.02
	Lg infuse	Infuse bone graft large	2 @ \$4900.00	\$9800.00	\$10,780.00
	Putty 10ml	10cc putty	2 @ \$1021.00	\$2042.00	\$2246.20
	Set screw 10un	Set screw, break-off	1 @ \$165.00	\$165.00	\$181.50
	39 45 x link	39-45mm x10 crosslink	1 @ \$1505.00	\$1505.00	\$1655.50
	45 88 x link	45-58mm x10 crosslink	1 @ \$1505.00	\$1505.00	\$1655.50
	50 cm rod 2un	CP 4 rod 500mm	1 @ \$416.00	\$416.00	\$457.60

Charge Code	Itemized Stmt Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
81389991	6.5x40 mlti scrw	Multi axial screw 6.5x40	1 @ \$1358.00	\$1358.00	\$1493.80
	7.5x30 mlti scrw	Multi axial screw 7.5x30	1 @ \$1358.00	\$1358.00	\$1493.80
	7.5x40 multi scrw	Multi axial screw 7.5x40	1 @ \$1358.00	\$1358.00	\$1493.80
TOTAL ALLOWABLE				\$22,001.72	

The division concludes that the total allowable for this admission is \$37,835.72. The respondent issued payment in the amount of \$108,236.96. Based upon the documentation submitted, no additional reimbursement can be recommended.

- In its response to the request for medical fee dispute resolution, the insurance carrier and respondent in this dispute requested "a refund of the overpayment in the amount of \$70,577.25." Former 28 Texas Administrative Code §133.304(p), 17 Texas Register 1105, effective February 20, 1992, provided, in pertinent part, that "An insurance carrier may request medical dispute resolution in accordance with §133.305 if... the insurance carrier has requested a refund under this section, and the health care provider: (1) failed to make payment by the 60th day after the date the insurance carrier sent the request for refund..."

Former 28 Texas Administrative Code §133.305(a)(2)(C), 27 Texas Register 12282, effective January 1, 2003, provided that "a carrier dispute of a health care provider reduction or denial of the carrier request for refund of payment for health care previously paid by the carrier (refund request dispute)" can be a medical fee dispute.

Former 28 Texas Administrative Code §133.307(b)(3), 27 Texas Register 12282, effective January 1, 2003, specified that "The carrier... in a dispute involving a carrier's refund request" may be a requestor in a medical fee dispute. Section 133.307(e) required that "...carrier requests for medical dispute resolution shall be made in the form, format, and manner prescribed by the commission." Section 133.307(e)(2)(B) required that the request shall include "a copy of each... response to the refund request relevant to the fee dispute..."

The Division finds that the insurance carrier's position statement in response to the health care provider's request for medical fee dispute resolution does not constitute a request for refund request dispute resolution in the form and manner required by former applicable version of 28 Texas Administrative Code §133.307.

Furthermore, no documentation was found to support that the insurance carrier ever presented a refund request to the health care provider to support its burden of proof for a specific refund amount in accordance with §133.304(p). The Division concludes that the insurance carrier has not met the requirements of §133.304(p) or §133.307(e). For these reasons, the respondent's request for an order of reimbursement is not proper and is not supported. An order of reimbursement for the respondent is therefore not recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution	_____ November 2012 Date
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_____ Signature	_____ Medical Fee Dispute Resolution	_____ November 2012 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.